

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP RIZZEO MIDDLEBROOK,

Defendant-Appellant.

UNPUBLISHED

May 25, 2004

No. 245796

Oakland Circuit Court

LC No. 2002-185517-FH

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for unlawfully driving away an automobile, in violation of MCL 750.413. Defendant was sentenced as a fourth-offense habitual offender to 2 to 15 years' imprisonment, pursuant to MCL 769.12. We affirm.

This case arises out of defendant's unlawfully driving away David Saunders' car. Saunders was at a club late one evening; he had been drinking and felt "a bit happy" and "buzzed," but not drunk. Saunders drove his black four-door Prizm to a different bar at 1:30 or 2:00 a.m.; while he was looking for a parking spot, he was approached by a "woman," who asked if he "wanted a date." The "woman" got into the passenger seat and agreed that "she" would perform oral sex for \$200. Saunders then drove to an ATM machine to withdraw the cash, gave it to the "woman," and put his ATM card in the center console of his car. The "woman" wanted a pack of cigarettes, so Saunders drove to a gas station convenience store, left the car running with the "woman" in the passenger seat, and went inside to purchase them. After paying the cashier, he turned around to find that his car was gone. Saunders called the police, who arrived at the gas station within minutes. Saunders described the "woman" as 5'3" or 5'4" and weighing 105 to 110 pounds. According to Saunders, the "woman" had long, shoulder-length hair and was wearing denim clothing with a distinctive zipper, as well as pants.

Officer Dennis Emmi testified that he and his partner Officer Greg Hadfield were on patrol at 3:00 a.m. when they received a dispatch that a black Geo Prizm had been stolen by a black female, and was headed in a southbound direction from the gas station. Emmi and Hadfield located the car at a drive-thru ATM machine fewer than three miles from the gas station. They pulled up behind the car, angled toward the driver's side, and ordered the driver, who appeared to be female, to turn off the engine and get out of the car. They did not approach the car, but remained behind the open doors of their patrol car. The lights from the ATM machine and the headlights and floodlights from their car allowed Emmi to get a clear view of

the driver, who appeared to be a dark-skinned female with a prominent jaw line, and long hair, which also could have been a scarf. The driver was also wearing makeup. At trial, Emmi identified defendant as the person he saw in the stolen car. Hadfield testified that the driver appeared to be a male with long hair. At trial, Hadfield also identified defendant as the person he saw in the stolen car. The suspect turned and looked back at the police officers, then drove away. The police pursued the suspect, and found the car abandoned in the middle of the street just around the corner, with the driver's side door wide open. They unsuccessfully searched the immediate area, but five to ten minutes later, learned that other units were pursuing a suspect nearby. Emmi and Hadfield responded to the area where the suspect had been seen running into the woods, and eventually found defendant hiding in some brush. Emmi had no doubt that the person apprehended was the person he had seen in the car at the ATM machine. When he was arrested, defendant was wearing a long, gray turtleneck sweater and was not wearing pants. Hadfield testified that when defendant emerged from the woods, he did not have long hair, but testified that a wig had been found nearby. Hadfield testified that he could tell that the person they arrested was the same person he had seen in the car based on his facial features. According to Hadfield, defendant was wearing a gray or green long shirt, and was not wearing any pants or undergarments. Defendant was yelling that he "didn't do it."

Officer Kenneth Jacklic testified that when he arrived at the area where the suspect fled after abandoning the stolen car, he observed a black person wearing a long, blue sweater with a high collar, a burgundy wig, and a black head wrap running across the street. Jacklic pursued the suspect and chased him into the woods, where he found a male suspect hiding in some brush; the wig and head wrap were on the ground nearby. Jacklic arrested defendant, who was 5'9" and weighed 205 pounds; defendant was not wearing pants or underwear.

Defendant admitted that he was "prostituting" on the night of the incident, and that he was dressed as a woman, wearing a blue-gray long sleeved turtleneck shirt and white sweat socks with gym shoes; he also had a black scarf on his head. Defendant testified that he ran into the woods when he saw all of the police cars, because he thought a prostitution sting was in progress. Defendant maintained that he had never seen Saunders and did not steal the Geo Prism.

Shortly after calling the police, Saunders was taken to a location where he was asked if he could identify defendant as the "woman" who had stolen his car. Saunders indicated that defendant was not the person who had stolen his car, because that person had been a woman. Saunders was later taken to the police station and asked whether defendant was the person who had stolen his car. He again denied that it was the same person. Saunders testified that in addition to gender, the hair and the clothing of the suspect were different. Saunders did agree, however, that the complexion of defendant and the person who had stolen his car were similar.

Defendant was convicted of unlawfully driving away an automobile, and now challenges the sufficiency of the evidence to support his conviction based on an assertion that the prosecution failed to identify him as the perpetrator. Specifically, defendant argues that conflicting testimony regarding the identity of the driver created reasonable doubt as to his guilt. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

We are required to draw all reasonable inferences and make credibility determinations in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Further, “the scope of review is the same whether the evidence is direct or circumstantial.” *Id.* “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

This Court has held that “positive identification by witnesses may be sufficient to support a conviction.” *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). And it is well settled that “the credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *Id.* At trial, Saunders and the police officers gave conflicting descriptions of the person who had stolen the car. Saunders, who spent several minutes in his car with the perpetrator, testified that defendant was not the person who had stolen his car because that person had been a woman. The police, who had a clear and unobstructed view of the driver at the ATM machine, and who pursued him into the woods where he was apprehended, testified that defendant was the person who had stolen the car. In assessing credibility, the jury had the opportunity to scrutinize the demeanor of both the defense and prosecution witnesses. Based on their observations, and in light of the circumstantial evidence presented, the jurors rejected Saunders’ testimony and accepted the police officers’ identification of defendant. Therefore, we find that defendant’s conviction was adequately supported by the testimony of the police officers.

We affirm.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper